SPEECH

OF THE

HON. MR. PORTER,

OF LOUISIANA.

IN OPPOSITION TO THE MOTION MADE BY MR. BENTON TO

EXPUNGE FROM THE JOURNAL OF THE SENATE

The Resolution of the 24th March, 1834,

DISAPPROVING OF THE

REMOVAL OF THE DEPOSITES

BY THE PRESIDENT.

DELIVERED ON TUESDAY, MARCH 22, 1836.

WASHINGTON CITY.
DUFF GREEN, PRINTER.
1836.

SPEECH.

Mr. President: I have some diffidence in addressing the Senate on this question. The honorable Senator from Missouri has, with his usual industry, pronounced an elaborate argument in support of the resolution he has offered to the Senate. I suppose it to be the result of long meditation and much preparation. Neither the time allotted me since this discussion commenced, nor the state of my health, has enabled me to give to the question the attention it merits; indeed, such is my indisposition, that, were it not for the pledge I in some sort contracted yesterday with the Senate, I should decline addressing it to-day. But unless I have lost all perception of truth, and am utterly mistaken as to its effect when presented to the mind of others, I cannot be deceived in believing that no want of strength on my part can prevent me from exposing the utter feebleness of the position which the Senator has assumed.

It is not surprising, Mr. President, that great pains should be taken where a heavy responsibility is incurred. I say, sir, a heavy responsibility. The attempt is to deface and destroy the public records of the country; to alter and render obscure the journals *of a former Congress*, which are now the public property, and with which we have no constitutional concern, except as keepers and preservers. It is more than this—it is an attempt to obliterate the truth. Yes, sir, to obliterate it. For whether the vote of the Senate was or was not correct on the occasion to which the Senator desires to apply his expunging process—Whether it was the solemn expression of wise opinion, extorted from Senators under the high obligations of duty—or, as he will have it, the effusion of heated and blind party spirit, still *the fact is undoubted* that such a vote was given, and the object of the Senator is to have the record of that vote destroyed—this is, to erase the *truth* from your record. Such a proceeding, sir, is well calculated to excite solemn considerations, and calls for the exercise of every high quality which patriotism can expect at our hands.

Mr. President, it did strike me while the honorable Senator was speaking as most remarkable, that he should take such vast pains to show the vote of the Senate was erroneous and unconstitutional, in the instance which he has selected for this new process of his. A stranger, sir, entering these halls at the time he was indulging his zeal, and practising his epithets on the conduct of the Senate which formed a part of the last Congress, would, I am certain, have imagined that there was some provision in the Constitution of the country which required a record to be kept of all the proceedings of this body which *were* constitutional, and forbad any record being kept of those which were *in violation* of the Constitution. But, sir, that instrument may be searched in vain, and no such distinction can be found in it. The only portion which relates to our record makes none. I open it, sir, and what do I see? The imperative mandate "that each House *shall keep a record of its proceedings*." Well, sir, if its votes and its resolutions are unconstitutional are they not still *its proceedings?* and is the obligation less solemn and less binding on us to preserve them? Before, therefore, so much time and so much energy were exhibited in a critical analysis of the nature of these acts, it behooved the Senator to show some authority for expunging proceedings of the character he supposes these to be. Until he did this, all examination into their constitutionality was unnecessary and fruitless.

The Constitution, it is clear, cannot be satisfied by the distinction the gentleman has made Its language is directly palpably opposed to it; so also, sir, is its spirit. It is giving the enlightened framers of that instrument credit indeed for little wisdom to suppose that they contemplated making any difference. The objects sought to be attained by this constitutional injunction were many. They will readily suggest themselves to Senators, and it is unnecessary to enumerate them. Among the most important was the preservation of the evidence of the great public concerns and valuable private interests which depend on the action of Congress. Another scarcely less important object was to secure to the People a record of their servants' acts and votes, so that a correct judgment might be formed of their conduct, and justice dealt to them when their term of service expired. The illustrious men by whom the inestimable charter of our Union was formed, knew well that history which professes to teach, and does teach by the lights which experience furnishes, would be a false and treacherous guide if it recorded only the good deeds of men. They knew it was of equal importance it should enregister their errors and their vices, and they intended, therefore, that the record which they made provision for should be a beacon to warn as well as a light to allure. What useful knowledge, sir, could any man acquire by the perusal of ancient story, if it presented to him no examples but those which were exhibited by the virtues of antiquity—if it did not show to him the errors and vices and factions by which nations lost their freedom, as well as the simplicity and patriotism by which they established it? None, sir, none. Nor here would our journals be of any value, if they did not preserve the evidence of our faults and our follies as faithfully as they do that of our wisdom and our virtues. There is nothing therefore in the spirit of our Constitution, any more than there is in its letter, which can be tortured into the slightest support of the alarming and dangerous proposition which the Senator proposes for our adoption. I might, therefore, sir, well spare myself the task of following the honorable Senator from Missouri through the labored examination which

he has made of the vote of the Senate in the year 1834, in relation to the removal of the deposites by the President, or of noticing the heated and exaggerated picture he has drawn of the motives of those by whom it was given. Such discussion can have no profitable effect on the naked question as to the power of the Senate to alter and deface the public record. It may, it is true, increase party spirit, and flush it to the perpetration of an act which, in my conscience and on my honor, I believe will hereafter (when reason resumes its sway) be a source of deep mortification to all who now participate in it; but it can do nothing more. However, sir, some of the assertions and reasonings of the honorable Senator in this part of his speech to the Senate ought not to pass entirely unnoticed, and I may, perhaps, speak a little to a few of them before I sit down. My present purpose, however, is with *the merits* of the question, and leaving to the honorable Senator, for a time, the banks, and the panic, and the panic makers, and President Jackson, and his glory, and the old federalists—who, by the way, if they have joined the present Administration, are all transmuted into *pure democrats of the old school*—I shall proceed to discuss the subject upon these considerations, and these alone, by which, in my view of the matter, a correct conclusion can be obtained.

And, proceeding to do so, sir, I find it written in the fifth section of the first article of the constitution, that "*each House shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy.*" Now, sir, the first question which suggests itself in the inquiry is, what is meant by the words "*keep a journal of its proceedings?*" To that question I know of but one answer that can be given; and it is that which instantly suggests itself to every one, learned and unlearned, who reads them, namely, *that each House should record its proceedings, and preserve the record so made.* If this be not the true meaning, I know not what answer can be given. No other will satisfy the object contemplated by the Constitution. For without recording *there would be no journal*, and, without preserving *the journal would not be kept.* The honorable Senator has not furnished us with his *reading* of this clause. He has, to be sure, talked, and talked correctly, of a variety of meanings which belong to the word *keep;* but viewed in any other light than as a handsome exercise of ingenuity, I could not see what practical result was to be attained from the disquisition; for, after all, he failed to tell us what meaning he precisely attached to the expressions *keep a journal.* In this, sir, he did wisely. They have one, and one only meaning, in the common sense of all mankind. They have never had any other in England, or in Scotland, or in Ireland, nor in any of the twenty-four sovereignties which compose this Union. The understanding of them has been uniform, whether applied to courts of justice or legislative bodies. *The House shall keep a journal, the Clerk shall keep a record*, in all times, and in all countries where the language prevails, have been understood to write down what is done, and to preserve what is written. The expression, it is true, is idiomatic, but for that very reason is the sense unembarrassed and perfect. It never was questioned nor denied until the honorable Senator, in this rash attempt, found it necessary to perplex and mystify what until now every one considered clear and intelligible.

If then, Mr. President, the plain meaning of the words *keep a journal of its proceedings* be that the Senate shall cause a record of its proceedings to

be made, and preserve them, is there an impartial man who can doubt or deny that the resolution offered by the senator is a manifest violation of the Constitution? I think there is not; for the effect of that resolution will not be to preserve but to destroy. Does it make any difference that only a *part* of these proceedings, not *the whole*, is to be blotted, or obscured, or defaced? It makes none. The injunction is, that you shall keep a journal of your proceedings; and if you deface any, the smallest portion of them, what remains is not a journal *of the proceedings* but of a *part of them*; and this I contend is not a compliance with the Constitution. Under such construction of it if you strike out 999 parts out of 1000, you might just as truly say you *were keeping a journal of the proceedings*.

If this reasoning be unsound, I trust gentlemen who follow in the debate will prove it to be so. I am sure there is ingenuity enough here to do it, if it can be done. I hope they will show us how a *part* of a journal is the *whole*; and when they have done so, I will suggest to them that they will then have to explain to the public mind, and satisfy it, how *destroying* a record is obeying a mandate which requires you to *preserve it*. This, sir, I am aware they will find no easy task. Until it is done, permit me, in the belief that what I have advanced is true, to follow this measure out to its legitimate, I might add, its inevitable consequences. Upon the principle then involved in the resolution offered by the honorable Senator, I affirm the whole journal of the proceedings of the Legislature is completely placed at the mercy of a majority in either House of Congress. The solemn and authentic record of the great public measures which may occupy its deliberations, the equally sacred register on which private rights depend, may be struck out in an instant by the fury of triumphant faction, the promptings of sordid cupidity, or the fears of conscience-stricken profligacy. And let us not, sir, flatter ourselves that the time will not come when these things will be done. He knows little of the causes of decay and dissolution which exist at the creation of every thing which our imperfect nature produces, and which expand and gather force with age, who can doubt it. I hope the day is distant, but we do but accelerate it, sir, when we cut ourselves adrift from the Constitution.

But, says the honorable Senator, all this is *special pleading*. The word *keep* has thirty-six meanings in the dictionary, and you have no right to take one of these meanings alone. We have just as much right to select our meaning for the word from any of its various significations. This, sir, is rather a new, and certainly *a very independent way* of interpreting a constitutional or legal provision. But let that pass for a moment, and permit me to say that, by the terms *special pleading*, the Senator means *refining, hair-splitting;* there never was any thing more gratuitous said here. On the contrary, sir, we rely on the plain common sense meaning of the expression; upon that sense in which the words are understood by every one the most slightly educated through the whole Republic. We contend for the signification which the terms have every where and in all times received. If we left them for *new* meanings, to suit *extraordinary* occasions, as the honorable Senator is doing, we would be open to the reproach, as he justly is. I charge it upon him, sir, and I shall make the charge good. He has departed from the usual signification, and substituted niceties and refinements for the general and popular use of the words; and, in doing so, has violated a rule of construction as universal as it is sound, and which it would be a

reproach to the Senator he was not familiar with before he was three months in the office where he received his legal education.

Recurring then, sir, to the word *keep*, and its thirty-six meanings, I have to say, sir, that nothing can be more true than that the verb has a variety of senses; but does that prove that it has not one known unquestionable signification when used as it is in the Constitution of the United States? Certainly not. Sir, let the gentleman apply any one of the various meanings of this word to be found in the books of philology, save that which we contend for, to the terms *keep a journal*, and I will venture to say the utter absurdity in which the process must end will convince even him how vain and futile and dangerous it is to depart from the popular understanding of the matter. No doubt, as the honorable Senator says, *keeping a door*, *keeping house*, and *keeping a store*, do not mean the same thing. The meaning varies with the object to which the verb is applied. But in these cases the idiomatic sense supplies the necessity of all reference to dictionaries; it is perfectly comprehended by every one, and supposes that which is done, or necessary to be done, in *keeping a door*, *keeping house*, *or keeping a store*. It would be a waste of time for me to explain them; they explain themselves more forcibly than I could by any other words. Verbs and adjectives in all languages, vary in their meaning by the objects to which they are applied, the latter sometimes by their position in relation to the noun. For example, the appellation *envoy extraordinary* has a clear and specific signification; transpose the words, however, and say, an *extraordinary envoy*, and they present quite another idea. Well, sir, what would you say to any one who would rise, here or elsewhere, and contend that, as the dictionaries of our language declared that the adjective *extraordinary* signified *remarkable*, *wonderful*, the expression *envoy extraordinary* conveyed the idea that a *wonderful envoy* had been sent to our country? Not less extravagant, I contend, sir, is it to depart from the common sense meaning which is given to the verb *keep* in all the varieties in which it is used.

Many, sir (said Mr. P.), as are the uses which are made of it, I am not aware that it has two meanings in its application to any one object. The thing to which it is applied controls and fixes its sense, as in the terms *keep a promise*, *keep a journal*, *keep a horse*. All these have popular and known significations, from which you cannot depart without falling into conclusions absurd and untrue. Let us take by way of illustration the expression *keep a horse*. We will suppose the Senator to have delivered his to a livery stable *to be kept*. He calls for him some time after, and the owner of the stable tells him that the animal *has perished for want of food*. Reproach instantly follows this breach of engagement, and it would not be appeased, I hazard nothing in saying, by the keeper showing the honorable gentleman that, according to Webster's or any other dictionary, the verb *keep* has a variety of senses, and that one of them perfectly justified him in his notion that he was not obliged to give the horse food. Sir, I will venture to affirm the Senator would consider this perfect *special pleading*. So, sir, if he gave a friend a bundle of papers *to keep*, and, when he called for the deposite, should be told that, according to the best philologists, *keep* among its thirty-six significations meant to supply with *the necessaries of life*, and, finding the book refuse all sustenance, he had thrown it away as utterly incorrigible, would not the honorable Senator consider the excuse for non-delivery *a great*

refinement! So, too, sir, if some thirty years since, when the Senator from Missouri and myself first became acquainted on the banks of the *Shawnee* (whose beautiful Indian appellation is lost in the prosaic one of *Cumberland*,) a lock of hair had been bestowed on him by Lady's love *to be kept* until they again met, and on her calling for the dear pledge he had informed her that his promise to keep did not bind him to preserve, because one of the meanings of the word was to *pasture*, would she not, sir, have considered the gentleman more learned than true—a gay deceiver—and a great *hair-splitter*? And so, sir, when the Senator contends that the constitutional injunction to *keep a journal* means that you may *destroy a part of it*, I say to him that he can only reach such a conclusion by *special pleading*, *by refining*, *by hair-splitting*, or by abandoning common sense, and trampling the Constitution under foot.

No human ingenuity, sir, can sustain the proposition the Senator advances. I know there is scarcely any thing in favor of which something plausible may not be advanced, and the gentleman, I admit, has made the most of his case. But no covering he may throw over the Constitution can hide the wound he inflicts on it. The honorable Senator, under his heated feelings, may consider his case as made out; I do not say he does not so consider it. But those who look calmly at the thing will see nothing but *excuses*, where he finds *reasons*. They who are anxious for the violation (I do not say there are any such in this body) may be glad to have these excuses furnished to them. But time *and the silent monitor within* will do their work, and they will live to see the day when the shout of party triumph will bring no joy; when they will be compelled to look for consolation in the repentance which ever follows the conviction of wrong committed. I hope they will have that consolation, sir; God forbid they should not.

But the honorable Senator has one ready for them now. He says, if I understand his argument correctly (and if I did not I pray to be set right), that no practical injury can result from the act. The process by which this consolation is obtained is somewhat curious. The gentleman tells the Senate that there are 1,000 originals of the journal, and that the defacing of that kept by the Secretary leaves all the rest complete. Well, sir, admit the position to be correct, and what then? Does that furnish any argument in favor of disfiguring *one* of them? Whether there be many or few originals, are they not all equally under the protection of the Constitution? If so many are to be kept as a record of our proceedings, is it not indispensable they should all be true records? Did the Constitution contemplate that some of our journals should exhibit a faithful record of our proceedings, and others should not? Or am I to understand the honorable Senator that enough which are true will remain to correct that which the expunging resolution purposes to falsify? If that be the position, I leave to him and his friends all the advantage they can derive from the argument.

But, sir, I pray leave to enter my utter dissent to the proposition that we have one thousand originals of our journals. We have only *one* original, sir; that which is made up by our Secretary, read over to us, sanctioned by the approval of this body, and placed among the archives of the Senate. It is that, and that alone, which forms the *record* of our proceedings, and furnishes the *original*, from which transcripts become evidence elsewhere. The *originals* of which the Senator speaks are not even copies; they are but the *copies* of a copy furnished by our Secretary to the printer. I am

aware of the decisions of courts, which the Senator from Missouri has quoted on the admissibility of these printed copies as evidence. It is not my purpose to go into a critical investigation of the soundness of the doctrine by which such a rule has been established. I content myself with saying that these cases do not proceed on the principle that the printed journals are originals ; they go on the supposition that they are *true copies.* In giving them even this character, the tribunals of justice have gone very far, and the cases in which they have been received are of modern date, and of somewhat doubtful authority. They have been, as it were, extorted from the courts by the great convenience of the practice, and from a strong and in general a well-founded belief that they are faithful transcripts. But at the utmost they are nothing more than *prima facie* evidence, and if contradicted by the original in writing, of which I have spoken, they must instantly yield to the higher authenticity which belongs to it. To all acquainted with this subject it must be apparent that the whole matter exhibits a great relaxation of the salutary rule, that the best evidence the nature of the case will admit of must be produced. But be this as it may, the doctrine gives no sanction to the idea that these printed journals are originals. And admitting it to be sound and correct, it by no means supports the proposition that the original is not to be preserved with care and fidelity.

We have been referred, Mr. President, to the practice of the Parliament of Great Britain on matters of this kind. It is stated that that country has a Constitution as ours has; that our parliamentary proceedings were borrowed from, and have a reference to, theirs ; and that we are in the daily habit of referring to parliamentary rules and parliamentary practice as our guide. From these facts the conclusion is drawn, that every power which they may exercise we can also exercise. I believe this is a faithful summary of what the honorable Senator advanced on this branch of the subject, and I take occasion to say that it all has my entire assent, save the conclusion which he has drawn. That conclusion too would be sound enough from *his premises;* but it is incorrect because the Senator left out one important and controlling postulate which belongs to the question, and which I shall immediately notice.

It is the constitutional provision which we have on the subject that makes all the difference for which I contend. Were it not for it, the rule referred to by the Senator, that the power to expunge from its journals any offensive matter found in them was inherent in every legislative body, could not be contested. But it is obvious that a rule must be subject to the exception, provided the legislative body itself has not rules prescribed for its government by a higher authority inconsistent with the exercise of such a power. That such is the case here I affirm, and it is this circumstance which takes away all force from British precedents when applied, in a case of this kind, to the proceedings of an American Congress.

Great Britain, Mr. President, does not possess, as we do, a written Constitution. The great principles of civil and political freedom are, it is true, found in *Magna Charta*, and her bill of rights, put forward at the Revolution of 1688. But even they do not form a constitutional charter which places them beyond the control of Acts of Parliament. And we must look to all these, to ascertain what *constitutional* provisions exist in England controlling the rules of the two Houses of Parliament in regard to their own proceedings. I have looked into all these, sir, and I do not find

in any of them a single provision prescribing rules on this subject to either House of Parliament. The matter is left entirely to the discretion and control of each body. It follows, therefore, that the inherent right which exists, I admit, in every legislative assembly to regulate its own proceedings, flourishes in full force there. To the possession and exercise of that power alone is the practice of expunging to be referred. Wholly unchecked by constitutional restrictions, they exert it as they please, without stint and without control. They are under no *constitutional* obligation to keep any journal; unless as a matter of convenience, I suppose they would not keep any. With such absolute power over the *whole* of the journal, they are of course complete masters over *every part* of it. They may expunge as they please, or preserve, or not preserve, as they choose. But how stands the case with us? Have we a discretion on this matter? Can we dispense with *keeping* a journal? And if we cannot dispense with recording our proceedings, how can we dispense with a portion of them? Let the clause of the Constitution already cited answer these questions, and after gentlemen have pondered on it, let them see what authority they can derive from the parliamentary practice of England to justify the attempt to deface and render obscure the *constitutional record* of this House.

In connexion with this branch of the subject, sir, let me refer for one moment to that part of the Constitution of the United States which declares that the *yeas* and *nays* shall, at the request of one-fifth of the members present, be entered on the journals. No such rule as this is found in the *Lex Parliamentaria* of England. No doubt either House might adopt it if they chose. But if they did, could any examples of theirs, by which it was refused in a particular instance, dispense us with the obligation to have the entry made in all? Surely not; and therefore I do not see why, without any constitutional obligation to keep a journal in that country, their precedents can enlighten us as to our duties here. By the way, sir, I should like to be informed whether, by this expunging process, the *yeas* and *nays* can also be erased from your journal, and the members of this body deprived of their constitutional right to have their names recorded and their opinions registered on all measures on which they vote. I suppose such a principle will be scarcely contended for; the violation would be too palpable. And as there are no English precedents to close the gap which such an act would make in the Constitution, it will hardly be thought of. Well, sir, if the *yeas* and *nays* cannot be expunged from your journal, what becomes of this constitutional privilege, alike important to the constituent and the representative, by which the record of his vote is to be preserved—*a record which will show the names, but give no information on what subject they were recorded?* The whole proceeding, sir, offers a fine commentary on the value of constitutional barriers, in restraining the passions of party in a free Government.

It is, however, said that our rules of proceeding are in a great measure taken from those of the English Parliament, or were made in reference to them, and that we are in the daily habit of referring to them as a guide in cases new and unprovided for. True, sir; but does not the honorable Senator see, in this very circumstance, a very strong, if not the strongest reason against the introduction of English rules on this question of expunging? These British rules were once, sir, not only referred to in this country, they formed the law for the government of our Colonial Legislatures before the

Revolution. The great men, sir, who formed the Constitution of this country knew this perfectly well. They were also quite familiar with every thing in the history of the English Parliament in relation to expunging, and they knew better than I do, and quite as well as the honorable Senator from Missouri, the right on which the keeping of a journal stood there—its limitations and its extent. Now, sir, I ask, if it had been their intention to leave that power at the discretion of the American Congress, why introduce any rules at all into our Constitution on this matter? Why not leave this part of parliamentary practice to the control of the Legislature, as they left all the rest? It must strike every one, sir, on reading the Federal Constitution, as most remarkable, that in an instrument of that kind, in which nothing is looked for but general provisions, we should find such special enactments on the subject—nothing left to discretion. But that surprise, sir, readily yields to a little reflection, and the value of the clauses in question is seen. The men by whom the great charter of our Union was formed came from the school of the Revolution, so fertile of talent and of virtue. They were profoundly acquainted with all the causes by which free institutions can be upheld and may be destroyed. They knew that the legislative branch of the Government, from its construction and its powers, if corrupt, was more formidable than all the rest to the liberties of the People. In it they were aware factions must arise and riot. History had taught them how majorities in public assemblies are prone to trample on the rights of minorities. It was deemed, therefore, of the highest importance to secure, as far as possible, a record of all the acts of the Representative, and to give publicity to them, so that the People might know what each member did, and what he did not do. They wished to place before the traitor who is false to his duty here, the certainty that his evil deeds could not be concealed while living, and that an authentic record would carry down to the latest posterity his loathsome memory. Hence they determined that he should neither falsify the record of what he did, nor deprive his opponents of the evidence of their opposition to him. These were the reasons which induced the framers of the Constitution to make your journals sacred. And you do violate as holy ground as any the Constitution covers, when you lay your hands on them, and blot and deface them. If these considerations are entitled to the weight I think justly due to them, with what semblance of justice can it be urged that these matters are to be regulated by English parliamentary practice? The introduction of any rules on the subject into the Constitution excludes such an idea; and the rules themselves, inconsistent with those prevailing in England, forbid any such conclusion.

Let us however, sir, follow this matter a little further. If, as the honorable Senator says, we are to be governed by the English practice on this subject of expunging, I presume we must take that practice entire; we are not at liberty to introduce one part of it and reject another. There is certainly no rule in our body which prescribes how it is to be done; we must, therefore, imitate the parliamentary precedents throughout. Now, if I understand the precedents right, they establish the principle that, whenever the parliamentary proceedings infringe on the rights, real or supposed, of the Executive Chief Magistrate, he sends for the journals, or comes to the House, and strikes out the offensive matter with his own hand. When, on the contrary, the powers of the body on legislative matters are impugned by the *vote*, *order*, or *resolution*, or are improperly exercised, the erasure

is made by an officer, under the order of the House. Such appears to be the practice there; and if it is to govern us here, let us have it in its purity. The resolution, therefore, proposed by the Senator is entirely gratuitous; the thing can be done, and strictly speaking, ought to be done, without any action on our part. The President himself, according to the *excellent rules* of Parliament which the gentleman recommends to our adoption, has the right to send for our journals, and make such correction in them as he thinks fit. That Senators may see I am not mistaken on this subject, I beg leave to quote to them the following *illustrious precedent*, derived from the act of the *renowned* and *sapient* King JAMES THE FIRST, *of blessed memory*.

The House of Commons in England, sir, at the time when their glorious contest between the prerogative of the Crown and the rights of the People was about to commence, passed the following resolution:

"The Commons now assembled in Parliment, being justly occasioned thereunto, concerning sundry liberties, franchises, and privileges of Parliament, amongst others here mentioned, do make this protestation following; that the liberties, franchises, and jurisdictions of parliament, are the ancient and undoubted birthright and inheritance of the subjects of England; and that the urgent and arduous affairs concerning the king, state, and defence of the realm and of the church of England, and the maintenance and making of laws, and redress of mischiefs and grievances, which daily happen within this realm, are proper subjects and matter of counsel and debate in Parliament; and that in the handling and proceeding of those businesses, every member of the House of Parliament hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion the same, and that the Commons, in Parliament, have like liberty and freedom to treat of these matters, in such order as in their judgment shall seem fittest; and that every member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by censure of the House itself) for or concerning any speaking, reasoning, or declaring of any matter or matters, touching the Parliament or Parliament business. And that, if any of the said members be complained of, and questioned for any thing done or said in Parliament, the same is to be shown to the king, by the advice and consent of all the Commons, assembled in Parliament, before the king gave credence to any private information.

The sovereign just alluded to, sir, on learning this audacious avowal of right on the part of the Commons, was extremely indignant; he dissolved the body, and calling for the journals, struck out the resolution *with his own hand*.

Now, sir, I propose that we shall in all things conform to the *right royal precedent*. Let there be no half-way work. Let us carry out the glorious example in all its length, breadth, and proportions.

If, however, the honorable Senator will not go the *whole*, I recommend to him to come as near to it as he can, and I humbly submit to him whether he had not better so amend, or rather so modify his resolution that we may invite the President of the United States to visit this body, and be himself the instrument by which this stain on our proceedings should be removed. I would propose such an amendment myself; but, as I would be compelled to vote against the resolution even so amended, I am afraid it would not be courteous to adopt such a course. But I again recommend to the honorable

Senator to think of the matter, and give his proceeding the shape I propose. The Senator, I see, signifies his dissent, and I fear we must swallow the dose as he has prepared it; but hoping that my suggestion might be favorably received, I had this morning, before coming here, carried out the whole scene in my own mind.

I had imagined, sir, the Senate convened; the members in their seats; our faithful secretary at his post. The approach of the President is announced. Immediately our Sergeant at-Arms, a very grave and discreet person, who each day so clearly and audibly announces, "*Message from the House of Representatives,*" &c. &c. &c., takes his station at the door, and, in a distinct and firm tone, cries out "*The President of the United States.*" He enters. We rise from our seats, joy glistening in the eyes of his friends, dismay pictured on the countenances of his opponents. He traverses the room with a firm step and dignified air. You rise from your seat, sir, and receive him with that grace and urbanity which so eminently distinguish you—you salute him with affectionate complaisance. He answers your salutation with kindness and dignity. All eyes are fixed on you and him; and, more favored than other mortals, our vision is blessed at the same moment with the *setting* and the *rising* sun.

The preliminaries of reception passed over, and the bustle attending it terminated, a solemn silence prevails. You slowly rise from your seat—the President does the same. You pause for a moment, and cannot conceal the emotions which the affecting scene gives rise to; you are, however, at last composed, and you address the President in these words:

"Sire: The Senate of the United States have imposed on me the most agreeable duty of announcing to you the object which has induced them to request your presence in their chamber. Deeply impressed with the value of your services in the field and the cabinet; convinced that, under Divine Providence, you have rendered more services to mankind '*than any other mortal who has ever lived in the tide of times,*'* they are anxious to show their devotion to your person, and their sensibility to your fame. It is with grief they are under the necessity of saying that there is found on their journal a resolution of this body, which is unworthy of them and of you. That resolution declares that the Senate differ in opinion with you on the lawfulness and constitutionality of one of your public acts—a declaration, sir, which they had no authority to make, and which is untrue, inasmuch as it dissents from the opinion of you, the wisest and the best. The Senate have resolved that it shall be expunged from their journals, as a warning to posterity that this branch of the Legislature shall, in all time hereafter, keep within its constitutional powers, and express no opinion on any act of the Chief Magistrate. The Senate have considered, sir, that it would be more grateful to you, and more conformable to precedents drawn from the *purest periods* of British history, that you should expunge *this odious resolution* with your own hand. The manner in which the expurgation should be effected is left entirely to your discretion. To *erase* the resolution by drawing black lines *around* it, is the mode preferred by many of your friends, and particularly by that *distinguished and high minded* body the Virginia Legislature. I present you, sir, this pen, that it may, in your own hand, avenge your wrongs, and shall only further say, sir, that this is the happiest and proudest moment of my life. *It is glory enough for any one man!*"

* Vide Mr. Benton's speech.

Sir, I had also run out the gracious answer which the President would have made to this loyal and affectionate address, but I felt I was treading on ground which I ought not approach, and I therefore adandoned it.

Sir, I think it scarcely kind of the Senator from Missouri to deprive the the world of the interesting ceremony, so royal in its precedent, and so valuable in the support which the example would afford to the cause of freedom and legislative independence. I hope he will yet reconsider the matter, and if we are to have the process applied to our journals, give us the pure, unadulterated English practice on the subject.

But, sir, I must leave these pleasant contemplations, and return to the argument. And sir, I contend that, even admitting all the reasoning offered in support of the resolution proposed, still we have no authority to do the act which the Senate is called on to do, because the journal which it is proposed to blot and deface is not *our* journal, but that *of a former Congress*. I think I have conclusively shown that we have no power over our own journal after it is made up; and I am not to be understood as in any respect abandoning the ground assumed in relation to it. But all the reasoning which established that proposition acquires an increased force when brought to bear on the present question. Some embarrassment is created in the mind on the first view of this matter, from an idea which commonly prevails, of the Senate being a permanent body, and that its journals, from its creation up to this time, belong to it in that character. But, sir, it is evident this position is only true when applied to the Senate in its *executive* capacity. In discharging its *legislative* functions, it has a limited existence. It can only act for two years at a time, and at the end of that period which terminates a Congress its legislative powers terminate, as those of the House of Representatives do. When it meets a House of Representatives whose whole number is newly elected, it meets that body with the one third of its members also newly elected, and both form a new Congress, and are not a continuation of the preceding one. The longer term of service of the Senators does not affect the duration of the Legislature to which they are deputed, nor destroy its distinctive character. They are members of several Congresses, but several Congresses do not enter into and merge in a continuous Senate. The Constitution of the United States vests the national legislative powers in *a* Congress composed of *a* Senate and House of Representatives, not in *the* Senate and House of Representatives. I contend, therefore, sir, that the Senate of the United States stands precisely in the same relation to the legislative journals of a former Congress as the House of Representatives does; and that, if the present House of Representatives has no authority to alter or deface the journal of that branch of the Legislature of the 23d Congress, this body cannot touch the journal of the Senate, which formed a part of it. We are the *keepers*, sir, not the *owners*, of the volume which contains the proceedings of that Legislature. Is it possible, sir, the extravagant proposition will be maintained that the journals of the Senate of 1790 belong to the Senate of 1836, and that they have the power to change or obliterate what is written in them, or destroy them altogether at their pleasure? And yet that proposition must be maintained, to justify the act now proposed to be done. Far from being our property, they are that of the people of the United States; and you have just as much right to order by a resolution of the Senate, that one of the national frigates should be altered or destroyed, or one of the fortifications of the country dismantled,

as you have to touch the records of a former Senate. Did there exist a law of Congress making it a penal offence to alter or deface the journal of either House or Congress, and our Secretary, who might commit this act by your order, should be indicted for it, I deny that he could successfully plead the mandate he received from you as a justification. If he offered such a plea, and it was demurred to, I hazard little in saying, that in case the matter were carried before the Supreme Court of the United States, they would hold he had no valid authority for what he had done.

Mr. PORTER having here become exhausted, a motion was made, and unanimously carried, to postpone the subject under debate.

On resuming his remarks the following day, Mr. PORTER said: I am quite sensible of and grateful to the Senate for the indulgence which it extended to me yesterday, and I feel that the best return I can make for its kindness is to condense as much as possible what I have further to say on the question now under consideration.

In the observations I had the honor to offer to the Senate yesterday, I touched on all the arguments offered by the Senator from Missouri which related to our power to expunge, save that which he based on a precedent drawn from a former proceeding of this body. Sir, I am free to confess, when the gentleman read the resolution which, by its language, affirms such a power, I never was more struck with astonishment in my life, and it was under the influence of an irresistible curiosity that I asked the Senator the question I did, and not from the intention of interrupting the train of his remarks. He rebuked me for the interruption justly, but gently, and I acquiesced in it. But, sir, when the honorable Senator further told me to beware resting the matter on so small a point, "or I might be blown up," I felt prepared to join issue with him, and to show him that the point is by no means a small one On the contrary, the inquiry suggested a principle on which the whole value of the case, as a precedent, depends.

If the Senate, in the instance relied on, had determined they possessed the power to expunge from their journal an entry made on it, we should then have had the question submitted, whether any example set by others could authorize us to surrender our clear and conscientious convictions of constitutional obligation. But the case, sir, does not impose any such necessity. What, sir, is its history? It is this: On the last day of a session of Congress, in the year 1806, a petition, or memorial, was presented from certain persons, then under conviction for offences committed against the laws of the United States. This memorial reflected strongly on the conduct of the Chief Magistrate, and its tenor was entered on the minutes. How long after the entry was made we do not know, but not many hours after, *and on the same day in which the petition had been received*, a motion was made and carried to expunge it *from the journal*. This motion prevailed. The confusion and hurry which always attend the transaction of business on the last night Congress sits, accounts fully for the inaccuracy of expression used in the resolution, as there was *no journal* until the entries made during the day were read over and sanctioned by the approbation of the Senate. Until that approbation is given, the acts of the Secretary are no more than minutes of proceedings, over which the body has complete control; just as in the same manner, the entries of a clerk of a court made during the day are sub-

ject to the revision and correction of the judge when read the following morning. Had not the Senate been about to adjourn that night, the measure was entirely gratuitous, as the correction could have been made at the commencement of the next day's sitting, when the minutes prepared by the Secretary were read over. It did not, however, sit, and it is probable this method of getting rid of the obnoxious matter was preferred, as it was a period when party run high, and the step taken by the petitioners well calculated to excite the passions which belong to such times. Be this, however, as it may, it is obvious that whatever form the majority chose to give their resolution, their power over the matter was undisputed.

I see, sir, some gentlemen dissent to this position. I consider it, however, perfectly sound. It cannot be, it is not true, that the secretary of a Legislature or the clerk of a court has the right to place any matter he pleases on the minutes of the proceedings, and that neither the judges in the one case, nor the legislative body in the other, have the power to expunge from them what is improperly placed there. It cannot be, it is not true that, if errors are committed by either, they must remain and cannot be corrected; all practice and all reason are opposed to such a doctrine. But this control over the proceedings, before the journal of the clerk or secretary is made up and sanctioned, is totally different from the right claimed here to change or deface the record after it is complete. The court, during its term, may correct any error into which it has fallen. Its minutes are under its control for the same time. But was it ever heard, that it could, at a succeeding one, change, erase from, or add to the record of its proceedings of a former session? Never, sir. And so, sir, in reason, and on the true principles of the Constitution, is the power of this body limited. Its record, once made, becomes sacred; it is the property of the People, was intended for their protection, and you have no right to deface it.

The Senator from Missouri was well aware of this objection to the precedent cited by him, and he endeavored skilfully to evade it by saying that at all events we could not deny that it was a complete answer to our argument, which assumed the constitutional duty of this House to record all its proceedings. Here, said he, *was a proceeding*, and *a proceeding not recorded*. Sir, this is quite plausible, but on a close examination, it offers no real difficulty. The question presented in the instance referred to was precisely that we have been debating for nearly two months or more this session; and that is, the right of this body to reject a petition. We who were in the minority on the abolition memorials, and who contended for their rejection, urged that we had a right to refuse to consider them, and to deny them any place on our journals. Had we then known of this precedent we should have quoted it in support of the position we assumed, for, by erasing the memorial from the minutes, the then Senate declared that they were under no constitutional obligation to receive it, nor to permit any record of it to be preserved. Well, sir, I think the Senate decided correctly in the case to which I have alluded; but the honorable Senator and those who voted with him to receive the petitions will no doubt consider the decision of the Senate of 1806 erroneous. If erroneous, it is no authority. If, on the contrary, it was a sound opinion, it establishes what I assert to be the true doctrine, namely, that the Senate have a right to refuse a petition, and are under no obligation to record it. The case

cited, therefore, does in no respect conflict with the principles for which we who oppose this resolution contend. All that is decided by it is, that the rejection of a petition is not such a proceeding as should be placed on the journals. But, Mr. President, did it go the whole length for which the honorable Senator introduced it, I could not permit in a case of this kind that it should control my actions. In constitutional questions, we are not permitted to surrender our conscience to *authority*. It ought to have no guide but *reason*. The precedent in itself contains nothing to challenge approbation. It was done in haste. We have no evidence there was *any* —we know there could not have been *much*—debate on it the last night of the session. It was passed by a small majority in a very thin Senate. It was a complete party vote, in high party times. To make such a proceeding decisive of a question of this magnitude, would be to place the Constitution of the country at the mercy of every faction which by turns may get possession of a majority in Congress.

I have already said, Mr. President, that I do not consider it made the slightest difference in the question before us, whether the resolution of the Senate, which it is proposed to expunge, was constitutional or otherwise. In my judgment the obligation imposed on us to keep a record of it is precisely the same, be its character what it may. The Constitution makes no distinction ; and where it does not distinguish, we cannot. But as I do not agree with the Senator from Missouri that the Senate, in the instance alluded to, either did injustice to the President, or improperly exercised the powers vested in it, I beg leave to make a few observations on the leading proposition, by which this charge of injustice and assumption of power was supposed to be established. We exercised, it is said, on the occasion complained of, *judicial* not *legislative* power, and we condemned the President of the United States when he was not accused, and we did so without even hearing his defence.

If all this be true, "the head and front of our offending" is certainly very considerable ; but I apprehend it requires no very great ability to show that it has no foundation whatever. We did not, sir, on the occasion alluded to, exercise judicial power, and, therefore, we neither tried nor condemned the President.

Although the *legislative, executive*, and *judicial* powers conferred by the Constitution of the United States on the Senate be in theory distinct, yet cases are constantly arising in which the action of the body in its several capacities is imperiously demanded on the very same matter. This is inevitable ; for as the powers conferred extend to the person who acts as well as the thing which is acted on, it is impossible, in legislating on the one, or in sitting in judgment on the other, to avoid deciding on matters which are common to both. The exercise of judicial authority in one aspect presents an exception to this principle. In the investigation which belongs to it, a *prominent and controlling inquiry is as to the intention with which the act was committed.* An examination of this kind can only be gone into by the Senate when sitting as a court of impeachment, but with this single exception, I maintain that this body, in its legislative and in its executive capacity, can go into an investigation of the legality of acts, and their tendency, just as freely as if no judicial authority was conferred on it. Were it otherwise, its *legislative* power would be most injuriously abridged, and the *executive* portion could not be beneficially exercised.

Indeed, it is only necessary to have the contrary principle established, and the Chief Magistrate would get a power in his hands which would enable him effectually to put a stop to all legislation on matters in regard to which he thought proper to resort to the exercise of Executive authority. But, if I understand the Constitution rightly, it was not intended the legislative functions of this body should be placed under the control of any other branch of the Government. My reading of it is, that in the use of them it is not more confined in its sphere, nor less free in its action, than the House of Representatives.

See, Mr. President, to what consequences the contrary doctrine would lead. Congress is almost constantly passing laws which require the exercise of Executive authority to carry them into effect; the President construes them according to his judgment, and executes them. The Legislature take the matter into consideration: they think he has assumed a power which the law did not confer, and the exercise of which is injurious to the public interests. A bill is introduced to correct the evil. Is the Senate estopped from acting on it, because, forsooth, it is compelled to look into the construction given by the President of the law, and finds that it differs in opinion from him? Can it extend no remedy for the mischief because he has done wrong?

In an early period of the federal legislation, an act was passed authorizing the President of the United States to remove from the public lands persons who had settled there without permission. It was intended to operate on that class of persons vulgarly but emphatically called *squatters*. In the year 1806 (I think), Mr. Jefferson enforced this law against a possession which Edward Livingston had of a portion of the batture in front of the city of New Orleans. To this property Mr. L. asserted title under a grant of the French Government to the society of Jesuits. His right was contested by the city of New Orleans, and by proprietors of the lots in front of the river, holding under the same grant. It is not necessary to say, if it were easy to do so, which had the better title; it is enough to state that the property did not belong to the United States, and that the act of removal, however good the motives of the President, and I do not impeach them, was most illegal, and in its operation oppressive in the extreme. An action was brought against Mr. Jefferson for this act, and the cause dismissed for want of jurisdiction in the court, on the ground that the trespass was committed in Louisiana, and the trespasser lived in Virginia. Now I ask, sir, if Mr. Livingston had applied, as well he might, to Congress for compensation for the great pecuniary losses which he sustained by this act of the President, could the Senate not have acted on the bill for affording relief, because it must necessarily have decided that the President had done an act, in the language of the resolution of the Senate, "not conferred by the constitution and laws, but in derogation of both?"

If gentlemen on the other side say it could not have acted on such a bill, because it *must* have decided on a matter which *might* thereafter come before it on an impeachment for the act, I leave the correctness of the answer to be decided by the American people without any comment of mine. And if their answer be that it could have constitutionally passed such a law, I inquire what difference there is between *deciding* that an act of the President was contrary to law, and giving relief for it, and making a declaration to the same effect in the shape of a resolution?

The contest between the present Chief Magistrate and the Bank of the United States is nearer to our own times, and offers an example equally illustrative of the ground I assume. By its charter, the United States engaged to place with it in deposite the public moneys. The President thought he had the power to withdraw them whenever he pleased, and without any cause save his own pleasure. The Senate think differently; and without stopping to inquire which party is right, I ask, could not a bill have been constitutionally passed here to compel them to be replaced, because, in our opinion, they had been illegally, and consequently, unconstitutionally removed? I suppose it will hardly be contended it could not. If it could, have we not the power to declare the illegality, by a resolution, in the hope that it will induce the chief Magistrate to reconsider his act and restore the deposites? It requires sharper optics than mine, Mr. President, to see the difference.

We need not stop here, sir. Let us follow this matter into the exercise of that executive power which the Constitution has conferred on us. Individuals while holding high offices are sometimes nominated to the Senate for others. The manner in which they have discharged their duties in the place filled by them is often and of necessity a matter of rigid and severe inquiry. Acts have to be sifted and examined, and a judgment formed on them, to enable us to decide whether it is proper to give our consent to the nominee occupying a high station. The investigation must, therefore, be often carried to actions which, if committed with a bad motive, might subject the officer to impeachment. Such a case, sir, has occurred, and our authority and bounden duty to go into such inquiries have never, as I know, been questioned, although it is manifest the same matters, in relation to the same person, may come before us in a judicial capacity.

Sir, this limitation, which now, for the first time in our history, is attempted to be placed on the legislative power of the Senate, is a pregnant sign of the prevailing notions of the day. The duties which this body has to perform, in the capacity in which it passed this resolution, are just as important and as sacred as those belonging to it in its judicial or executive character. With the opinions entertained by its members, they could not, without sacrificing their conscience at the shrines of ease and expediency, have refrained from the declaration they made in relation to the conduct of the Executive in removing the deposites. That measure filled them with a profound, and, I will add, a just alarm. In their view of the matter, they saw a great assumption of power on the part of the Chief Magistrate, and they could not be blind to the fact, that the tendency of public opinion was, and, I am sorry to say, still is, to surrender all authority into the hands of the Executive: to look to him, and to him only, as an index which is to point to what is useful and what is honorable in policy and in legislation. Had they consulted their own convenience, their course was plain; it was to bow to the storm, and trust that, when a less popular man was at the head of the Government, the healthy action of all its several departments would be restored. But they took lessons from a purer source, and, I trust, a higher wisdom. Experience had taught them that in free Governments dangerous precedents are always set by popular men; because it is they and they only who can create a delusion which will permit them to be set. They knew with what fatal effect this example would be cited in after times as a justification of still greater stretches of authority, and they determined, at all hazards, to resist

it to the utmost of their ability. For one, sir, I rejoice that they did so; the gratitude of their country awaits them; and posterity will do that justice to their acts and their motives which party spirit now refuses to award to them. Far too humble myself to connect history with my name, I fondly indulge the hope that the position I occupied at that moment will attach me in some degree to it, as one of those who stood manfully in the breach in the unequal battle which was fought for the Constitution. I desire no higher praise, and would ask no prouder epitaph to be engraven on my tomb.

We have been required, sir, in this debate, to *toe the mark*; and the hope has been expressed that, after having denounced the President during the session of 1834, stigmatized his conduct, and misrepresented his actions, we will not now take shelter under the defence that we did not mean to impute bad motives to his acts, and merely intended to express an abstract opinion on the lawfulness of his acts. This hope, Mr. President, so far as I am concerned, I am fully prepared to gratify. I am ready to come up to the line I advanced to then, and defend it. And I say, sir, that, during the whole of that debate, I do not recollect any charge of corruption or intentional violation of the Constitution charged on the President of the United States. His acts, removing the deposites and displacing the Secretary of the Treasury, were denounced it is true, and in strong terms; the unlawful assumption of authority was exposed in every point of view in which it was susceptible, and the pernicious tendency of the precedent set was painted in vivid colors. This is my recollection of the debate, sir. I do not pretend to say that, in the heat of it, expressions of another kind may not have casually dropped, but such was its general tenor, and I have no remembrance of its being carried further. As to my own opinions I can speak with great exactness, for I think now of the whole matter precisely as I thought then. I did not then believe, and I do not now believe, that the Chief Magistrate was impelled by any corrupt motive, or that he thought, when committing those acts we found fault with, that he was violating the Constitution and laws; and the little I said on the subject, for I was then a new member here, distinctly expressed this conviction.

But, sir, I considered the conduct of the President wrong. I believed that neither the Constitution nor the law authorized him to interfere as he did with the public Treasury, and so thinking I did not hesitate to say so, and sustain my opinions by my vote. The thought never crossed my mind that I was prejudging his case, if he had been impeached; nor can I now see the slightest reason for alleging that I did. And I cannot help, sir, remarking that they who press such an idea pay a poor compliment to the President when they contend that whoever differs with him in opinion as to the legality of his acts, necessarily ascribe to him bad motives for them; and decide the question of guilt, which we would have to try if we were in the exercise of our judicial functions.

But, sir, when the Senator from Missouri was about to bring forward this motion for expunging, I marvel he did not carry his attention to another resolution which is to be found on the journals of the Senate, and which, according to the doctrines he labors to establish, is in as great a degree a violation of the Constitution as that selected by him. I allude to that passed by this body in relation to the late Postmaster General (Mr. Barry), at the close of the session of 1834. That the Senate may see the perfect analogy between the two cases, I shall bring them in juxta-position. That which relates to the President is in these words:

"Resolved, That the President, in the late executive proceedings in relation to the revenue, has assumed upon himself authority and power not conferred by the Constitution and Laws, but in derogation of both."

That which regarded Mr. Barry is as follows:

"Resolved, that it is proved and admitted that large sums of money have been borrowed at different banks by the Post Master General in order to make up the deficiency in the means of carrying on the business of the Post Office Department, without authority given by any law of Congress; and that, as Congress alone possesses the power to borrow money on the credit of the United States, all such contracts for loans by the Post Master *are illegal and void.*"

Now, sir, I cannot see any the slightest difference between these cases, and I defy the most subtle intellect to show how they can be distinguished from each other. And, sir, on examining the vote given on that case, we do not find it was a party vote. Far from it; it was the unanimous voice of the Senate, and the vote of the Senator from Missouri stands recorded among the number. Well, sir, may I not ask if it was a violation of the Constitution of the United States to vote that Gen. Jackson had exercised a power not conferred on him by law, was it not an equal violation of it to vote that Mr. Barry had acted contrary to law? Do the names make any difference? Or is it that the action which is constitutional in regard to a Postmaster General becomes a heinous offence when committed against one clothed with the power and upheld by the popularity of the President of the United States? I trust not. But still it is left to gentlemen who are now prepared to expunge this resolution because it prejudges Gen. Jackson, to explain why they voted for that against Mr. Barry, which equally prejudged him. They must also explain why they leave the latter resolution untouched on the journals, and expunge the former. Is it because *they* voted for that against the Postmaster that it is sacred? or has slow repentance not yet reached them? Sir, it has been said that the most ignorant man may ask a question which the wisest cannot answer; and I apprehend they will find themselves pretty much in that condition in relation to these interrogatories.

The Senator from Missouri, however, who takes time by the forelock, has anticipated this objection, and has given his explanation. He says the vote was forced on him, and, finding himself compelled to act in this unconstitutional way, he conceived that he was in no respect sanctioning the course which the Senate pursued; that a negative vote would have admitted the jurisdiction just as much as an affirmative one. Without in the slightest respect impugning the sincerity of this declaration, and giving it full effect, I must still remark that though it may sustain the consistency of the Senator, it still leaves the precedent in all its original force, as the construction of laws, or the deductions to be made from the acts of legislative bodies, can be in no respect affected by the declarations of individual members of their views or motives in concurring in them. And I must also say, that I should think that it is a very good reason to vote against a resolution or law, that I believed it to be unconstitutional. But be this as it may, it only explains the vote of the Senator, and we have the sanction of all the rest of his friends for the constitutionality of our proceeding. And at all events it is no justification for permitting the resolution in regard to Mr. Barry to remain, and expunging that relating to the President. If either is to be effaced from our journal I hope both will. If justice requires this act, let it be extended to

the memory of him who has passed hence to another and better world, as well as to him who remains among us. Let the bounty of the honorable Senator extend to all similarly situated. I trust he will recollect,

"That the selfsame sun which shines upon a Court
Hides not his visage from the cottage."

I think, Mr. President, I have shown that the Constitution of the country will be violated if we adopt the resolution of the honorable Senator, and I hope I have satisfactorily answered the principal reasons presented by him in support of it.

The remaining portion of the honorable Senator's speech was devoted to two subjects: a panegyric on Gen. Jackson, and a vituperation of the late Bank of the United States. The relevancy of either or both these matters to the question now before us, he will excuse me for saying is not exactly seen by me, and I might well pass them by; but a few observations before I close, on some of the topics he advanced, will, I trust, be pardoned.

And first, sir, as to the praises which the Senator has dealt out with such an overflowing hand to the President, I have to say that I find no fault with them. They proceed, no doubt, from the strong partiality which the gentleman from Missouri feels for their object, and his friendship, and the modes he takes to manifest it, are matters entirely personal to himself. It would be the less excusable in me to complain of this failing, as it is one which I share largely in myself. In spite of every thing I can do, sir, I find the utmost difficulty in seeing faults in those to whom I am attached. My self love gets interested in sustaining them in my own opinion, and it is dexterous in palliating their weaknesses, and magnifying their virtues. With the perfect consciousness of this tendency of my own nature, I can make great allowance for what I consider the extravagant praise which the Senator has bestowed on the present Chief Magistrate. But, after making all concessions of this kind, I cannot help thinking the gentleman from Missouri has pushed the matter a little too far; that he has even stretched beyond its due extent the old maxim,

"Lay it on thick, and some will stick."

It is, perhaps, rash in me to say so. Sir, the honorable Senator is skilled in matters of this kind, but I just submit to him whether he did not set all the laws of probability (at least) at defiance, when he said that "Gen. Jackson had rendered more benefit to mankind than all the politicians that ever existed."

(Mr. BENTON here said he had been misunderstood; that he said "all the *hack* politicians who had ever lived.")

Mr. PORTER continued. If, sir, the Senator so limited his remark, I do not gainsay it. On the contrary, it has my entire assent. There is no class of men for whom I have a more thorough contempt—no, sir, not my contempt, they are not worthy of it—there are no men for whom I have a more intense pity, than I have for those who come under the denomination of *hack* politicians. They are a miserable race generally, lost to all honor, truth, and patriotism, who sell themselves for office, and when they obtain it, use place and station to plunder more successfully the People they have deceived. With such men, sir, I would not compare Gen. Jackson for a moment; but, sir, I think, on reflection, the Senator from Missouri will see

that I was not mistaken, and that, in the warmth of his eulogium, he did carry his comparison to the extent I have stated. Such are my notes of his speech. [Here Mr. BENTON said the Senator from Louisiana might so understand his remarks.] Well, sir, with that permission, I proceed to comment on the compliment paid to the President; and, looking back, I find that Solon was a politician, Aristides was a politician, Pericles was a politician, Cicero was a politician, John Hampden (a name never to be mentioned in a temple of freedom without reverence and gratitude) was a politician; Lord Chatham was a politician; John Hancock, Benjamin Franklin, and Thomas Jefferson were politicians. And sir, with these names come a crowd of recollections which force me to think that Solon, and Aristides, and Pericles, and Cicero, and John Hampden, and Lord Chatham, and Hancock, and Jefferson, and Franklin, taken altogether, have rendered just *as much service to mankind as Gen. Jackson, and a little more.*

Sir, in making these remarks, I am not to be understood as wishing to detract from the reputation of the President. He has many qualities I respect, and he has rendered important services to his country. No one, sir, admires more than I do his indomitable will, strong native sagacity, and that almost sublime energy with which he pursues and generally attains his purpose. I appreciate, too, sir, at its just value, the unshaken attachment he displays to his friends, though the virtue be, as I admit it is, more fitted for the ornament of private than of public life. But close alongside of these strong points of character lie defects which I fear will be painfully felt, and long seen in their untoward influence on public prosperity. But this is an ungrateful theme, which I have no desire to pursue, and I return to the remaining portion of the subject.

I am sure the Senate will pardon me for not following the argument I am replying to, through the minute examination given by it to the affairs of the United States Bank. I see no use in warring with the dead. The party in power have destroyed the bank on their responsibility, and I leave to them the pleasure and advantages of a *post mortem* examination. I shall not assist at it. If I had the wish to do so, I have not the knowledge to enable me to meet the Senator on so intricate and confused a field. He has with great industry made himself master of a variety of facts of which I have no knowledge, still less of those by which his statements might be explained, or the incorrectness of the views he has taken exhibited. Indeed, such is the absorbing attention which the Senator from Missouri has given to this same *great monster*, the Bank of the United States, that I apprehend there is no man in the Republic, except the President of the Bank, who is able to give answers to all the objections and charges which the fertile imagination of the honorable member can at any moment conjure up. I would, therefore, suggest to him that great advantages would accrue to the Republic if he would, in some way or other, have a regular discussion with *the parent of mischief, Old Nick* himself, in regard to the former transactions of the bank. They might play the game by letter, as that of chess is sometimes done, or, what would perhaps be better, they could meet at some half-way place, and each limiting himself to half an hour at a time (I should consider *this clause* in the agreement *very important*), they might at the end of five or six months end the matter quite as satisfactorily as the theological contests of a similar character we sometimes hear of generally termi-

nate—that is the auditors would come away with their heads confused, their passions heated, and their original prepossessions confirmed.

On this matter I can only state the impression produced on my mind by all I have seen and heard on this question, and the conviction I express has, at all events, this recommendation, it comes from one who has never had any connexion with the bank in any way whatever, and whose judgment is not clouded by the recollection either of favors received, or favors refused. I say, then, sir, in all sincerity, that nothing has yet come under my consideration to induce me to think that the Bank of the United States was not wisely and honestly conducted, and I am convinced that its operations were most useful and salutary to the nation. It gave us a sound currency, and it regulated exchanges with a success until then unknown, and which, if we have not reached that point already, we must soon cease to enjoy. No institution with its power, which ever existed, so studiously abstained from all interference with either national or state politics, up to the time when it pleased those opposed to it to raise the war cry of party, and to denounce it to the Public, instead of calling it before a court of justice, where, according to the terms of its charter, all violations of it were to be tried. I shall not attempt to characterize what it did afterwards; that must be judged by others: but I fear we are still too near the heated scenes which this contest has given rise to, to judge of it correctly. Dragged from its legal and constitutional judges, and arraigned before the American people, it had no choice as to the place or mode of defence. It had no alternative but to submit in silence to all the imputations heaped on it, or to meet them by denial and proof. That it may have sometimes overstepped the limits of defence by assailing its opponents, may be true; and that its language may not have been always as guarded as policy would have dictated, is perhaps equally true, nor is it important. The fault lies with those by whom the irregular and unconstitutional assault was first made, and much is to be pardoned to the feelings such a proceeding produced. It is very easy for the physician, who stands by the side of the victim who is racked, to tell him that his complaints must be courteous, and his cries gentle; but this species of forbearance, like many other virtues, it is much less difficult to preach about than practise.

Nor have I ever seen any proof that it abused its power at the time when, from the wide-spread alarm which filled the community on the removal of the deposites, a total want of confidence in pecuniary matters seized on the public mind; and this has again and again been shown. The contraction of its discounts was not greater than the removal of the deposites warranted; and the necessity for transmitting its funds from distant points to those nearer home, where it was menaced with a pressure, without the imputation of unworthy motives, accounts for the facts which the Senator referred to.

And, sir, there is just as great a mistake in regard to the motives attributed to the members on this floor who were opposed to the measures taken by the President in relation to the Bank. I am really, sir, almost tempted to get out of humor with the Senator from Missouri at the small compliment he pays to our common sense, when he asserts that the course pursued by us was prompted by the hope of influencing elections, and promoting party ends. I beg the Senator to understand that deferring to him, as I am sure all on this side of the House readily would, to his superior skill in electioneering, and to a knowledge of all topics by which the passions and prejudices

of the multitude can be inflamed, we were not quite so ignorant of these things as to ever flatter ourselves *the Bank* could be made popular with the People. Reason and experience, sir, both taught us another lesson.

We knew perfectly well, sir, that an institution of this kind never could be acceptable to the mass. Banks always must be disliked by them, because the benefits which they confer on society are indirect, and the philosophy of their utility out of common reach, while the advantages which they confer on the owners of them are great and palpable, and odious because they are exclusive. We knew all this, sir, and if we had not known it, experience had taught us the lesson. We saw the old Bank of the United States, which was wisely conducted, which had given us a sound currency, and whose whole operations had been beneficial to society—we saw it, sir, prostrated before public clamor and public prejudice, and that, too, at the moment we were about entering on war with one of the most powerful nations on earth, when its assistance was most important to the fiscal operations of the Government. We knew, sir, that all the causes which produced this result were in active operation again; and we foresaw *just as well as our opponents did*, that the same conclusion was extremely probable. There was no difference in our perception of this matter, though there was a wide difference in our view of the consequences. We saw distress and ruin to society in the measure, and we resisted it without any regard to its effect on our popularity. They either did not see them, or, if they did see, they disregarded them. I wish, sir, we had been false prophets. I would with cheerfulness give up the praise of wisdom and foresight, to avert the swarm of evils which this measure of the Administration is about to bring on the country, or rather which it has already brought on the country.

We clearly foresaw, sir, what would take place, and we as distinctly warned gentlemen on the other side of the inevitable derangement of the currency which must follow the measures they were pursuing. We entreated them to look back on the events which ensued on the refusal, in 1811, to charter the old bank—to reflect on the destruction of credit and prostration of morals which flowed from the multiplication of State banks soon after that period—to remember how at least one-third of the property of the country had changed hands in the space of a few years—and to think how many families had been reduced from affluence to poverty by similar measures. We beseeched them to look at those things, but we beseeched in vain. The then Secretary of the Treasury told us State banks could furnish *as good or better currency than the United States Bank.* The President endorsed the statement. The Senator from Missouri talked of his metallic currency, and the golden age which was approaching; and, under these errors and misconceptions the work of mischief was done.

But now, sir, when all these delusions have passed, or are rapidly passing away, is it not meet and proper that we should, from the eminence on which we stand, look at the full extent of the evil which is approaching us? We may draw from the past and present some salutary lessons for the future.

I shall not, sir, fatigue the Senate by going back to that period of our history at the close of the revolutionary war, when there was such a rapid depreciation of the value of the currency, though it furnishes strong examples to illustrate the views I entertain on this matter. I content myself with recalling the attention of the Senate to the circumstances which preceded, accompanied, and followed the destruction of the first National Bank, and

I am greatly mistaken if the parallel between the condition of the country now with what it was then, will not be found complete.

Previous to the expiration of the charter of the first Bank of the United States, the currency of the country was in a very sound state, and it continued so up to that period, and for a short time after. The States, however, soon began to charter institutions of their own, and between 1811 and 1813 a considerable addition was made to the circulation. In 1816 it became excessive. During all this period the country bore the external marks of prosperity; trade flourished, land, slaves, houses and lots, and all other species of property rose in value. Real estate, which could have been bought in 1810 for $10 an acre, in 1816 sold for $80 and $100. I remember the time well, sir; the universal prosperity of the country was the theme of every man's tongue, and speculation run riot in its magnificent schemes. But, sir, these things are subject to laws as certain as any thing else in this world. There is a point beyond which you cannot carry them. The bubble, when inflated too much, bursts. In 1817 and 1818 the reduction in the circulation commenced. It was at first slow and gradual, and its effects scarcely perceptible. Each day, however, rendered them more apparent, when, in 1819, the circulation being by 50 per cent. less than that of 1815, there ensued a pecuniary distress which has never been exceeded in any country. Every article of commerce, land, slaves, houses, fell as far below their real value as they had before risen beyond it. The most enormous sacrifices were made at public and private sales; and every one was astonished, for they could not account for such a change in the general prosperity.

Sir, they are all accounted for by these naked facts: in 1813 the circulation of the country was *seventy millions of dollars;* in 1815 *one hundred and ten millions*; in 1819 *forty-five millions*. Sir, it was not property that had *risen* in 1815, it was money that had *depreciated*; and it was the *greater value* of it, produced by its scarcity in 1819, that made that property fall in price.

I have taken these facts, sir, from the report of the then Secretary of the Treasury, Mr. Crawford, and they may be relied on. There can be no mistake in the deduction I make from them.

It would seem, sir, as if all experience was lost on us. We again see the same extraordinary rise in the price of every thing which is an object of sale. Every one, as heretofore, is expatiating on the universal prosperity, and there are no bounds to the imaginations in which men indulge in these matters. But, sir, our situation is just the same as it was in the other times I have been speaking of.

In 1830, our circulation was *sixty-one millions of dollars*. In January 1835, or rather in June 1834, it was *one hundred and three millions of dollars*. In 1836 it cannot be less than *one hundred and twenty millions*. An increase of *sixty millions of dollars* in six years! I give the facts from the official returns made by the Secretary of the Treasury. They come, sir, it is true, no lower down than 1835. But if we take the average increase for two or three years before that time, and reflect on the enormous rise of property since (a sure indication of an unhealthy circulation), we must be satisfied that there has been more than seventeen millions added to the circulation within the last sixteen months, and that one hundred and twenty millions is below rather than above the real estimate.

You see, sir, therefore, at a glance, the causes of the present state of things; and who cannot also, sir, see at a glance how it is to end? If the evil could be checked now, and the reduction be slow and gradual, we might escape the consequences which time has inevitably in store for us under any other policy. But, sir, far from expecting this, I look to an increase of the disease. It appears to me inevitable. A universal madness has taken possession of the public mind. Within the last four months I have heard of augmentations of banking capital, proposed or passed, to the amount of fifty millions of dollars, and more I am told are projecting; so that we may expect to see this system continuing until it breaks and falls from its own weight and magnitude. In the present state of things, the States are all interested to increase the circulation of their own banks, and prevent that of their neighbors. Indeed, we already see symptoms of a war of legislation (the result of jealousy), by which they are attempting to restrain the notes of banks in other States from passing within their limits.

This deplorable state of things must yet get worse; and well might the Senator from Missouri depict it in the colors he did a few days ago. He could not overcharge *this picture*—a picture, sir, rendered more painful to contemplate, by the recollection of our condition before the war was waged on the Bank of the United States. For sixteen years it regulated the currency of the country with a wisdom and success of which there is no parallel. We threw it away, and we see what we have got in its place. Sir, all the projects of regulating and checking the excess of bank emissions by law, refusing to receive at your Treasury their notes of a less sum than $20, will have no more effect than would have a bucket full of earth thrown into the Mississippi river to stop its current. And as to pushing gold and silver into circulation when you have five hundred and fifty banks interested in gathering it all up, and supplying its place with their notes, that is equally impracticable; a cheap and a dear currency never can exist together; the former always destroys the latter. Having no power by the Constitution to interfere directly with the State legislation in this matter, I see that the country is destined to go through the same scenes of agitation and suffering which it did previous to the operation of the late Bank of the United States. After the evils have come to a height when they can no longer be endured, we shall have another National Bank, and not until then. But I submit if it would not have been as well to have prevented this state of things two years ago? I inquire, what good has been, or can be attained, by putting the People through this fearful trial? Five or six years hence will be the time to get an answer to these questions.

Sir, it affords me no consolation for all the calamities which I see approaching, that we are told the People of the United States have approved of all the acts of the President in relation to the Bank. If they had, I could not surrender my impressions; but I have seen no evidence of the fact. It is inferred from his re-election, and from a majority of his friends being found in Congress. But, sir, I protest against any such a fallacy being received as proof of their approval. I believe, on the contrary, that the President was re-elected, and is now sustained, in *spite* of the removal of the depositesites, not in *consequence* of that act. When I came here two years ago I conversed in private with none of his friends who did not regret the step, though they were unwilling to abandon him for what they conceived to be

an honest error. These friends still sustain him, because, with his defects and mistakes, they prefer him to those who might take his place.

This, sir, is the true ground, not that taken in argument. By such reasoning as has been offered on this floor, every President who is re-elected has done no wrong, nor fallen into any error; he is infallible. It is a pure sophism, sir, to assert that the re-election of any man argues an approval of each of his acts. It is only evidence that, taking them all, good and bad together, the People accept him.

Sir, I have much more to say, but the state of my health forbids me to go farther; and I conclude by again returning my thanks to the Senate for the attention with which they have honored me.